

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JASON RATCLIFF, et al.,	:	
	:	NO. 1:05-CV-00582
Plaintiffs,	:	
	:	
	:	ORDER
v.	:	
	:	
	:	
ERNIE MOORE, et al.,	:	
	:	
Defendants.	:	

This matter is before the Court on the Report and Recommendation in which the assigned Magistrate Judge recommends that all of Plaintiffs' pending motions (docs. 19, 22, 23, 25, 27, 28) be denied without prejudice (doc. 35). For the reasons indicated herein, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety, and DENIES all of Plaintiffs' motions.

The Parties were served with the Report and Recommendation and were therefore afforded proper notice of the Magistrate Judge's Report and Recommendation required by 28 U.S.C. § 636(b)(1)(C), including that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Neither Party filed any objections thereto within the ten days provided for by Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(C). Pursuant to 28 U.S.C. § 636(b), the Court has

reviewed the Report and Recommendation de novo.

The Magistrate Judge reported that on March 12, 2006, he entered a Show Cause Order, directing Plaintiffs to show cause why their complaint should not be dismissed for failure to effect proper and timely service of process of the summons and complaint upon the named Defendants (doc. 31). The Magistrate Judge noted that in response, Kelsey Ratcliff, a non-party and wife of pro se plaintiff Jason Ratcliff submitted an affidavit along with certified mail return receipts allegedly showing that each of the named Defendants received a copy of the summons and complaint (doc. 32, Ex.1). The Magistrate Judge found that the documents submitted by Ms. Ratcliff did not establish Ohio certified mail service in compliance with S.D.Ohio Civ. R. 4.2, and that there was no evidence that Plaintiffs have ever properly served Defendants with the summons and complaint (doc. 35).

Although the deadline set forth in the Show Cause Order had passed, the Magistrate Judge entered another Order (doc. 34) directing Plaintiffs to effect proper service upon Defendants. Nonetheless, the Magistrate Judge stated that the Court lacked jurisdiction over any Defendant because Plaintiffs had not properly nor timely effected service. Therefore, the Magistrate Judge recommended that all of Plaintiffs' pending motions (docs. 19, 22, 23, 25, 27, 28) be denied without prejudice, subject to refiling, if necessary, after Plaintiffs established that the Defendants have

been properly served with the summons and complaint (doc. 35).

The Court finds the Magistrate Judge's Report and Recommendation well-reasoned and thorough. Accordingly, the COURT ADOPTS the Magistrate Judge's Report and Recommendation (doc. 35) in its entirety, and DENIES WITHOUT PREJUDICE, Plaintiffs' motions (docs. 19, 22, 23, 25, 27, 28).

SO ORDERED.

Dated: September 19, 2006

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge